IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1273 of 1996
With
SPECIAL CIVIL APPLICATION No. 1289 of 1996
With
SPECIAL CIVIL APPLICATION No. 6261 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATELIYA AMITKUMAR BALABHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DJ BHATT for Petitioner(s) : 1,
MR DA DESAI, learned AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/01/2007

ORAL JUDGMENT

As common question of law and facts arise in these group of petition, they are being disposed of by this common judgment and order.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner of Special Civil Application No.1273 of 1996 and petitioner of Special Civil Application No.1289 of 1996 have challenged the respective orders dated 25-1-1996 passed by the Commandant, State Armed Police Force, Group 7, Nadiad, Dist: Kheda discharging them from services.

Petitioner of Special Civil Application No.6261 of 1996 has challenged th order passed by the Commandant State Armed Police Force, Group 5, Godhra dated 9-2-1996 discharging him from service.

3. Petitioners of Special Civil Application Nos.1273 of 1996 and 1289 of 1996 were appointed on the post of Unarmed Police Constables on purely temporary basis for a period of two years and as probationers. That they were appointed vide order dated 20-10-1994 on the terms and conditions attached with the said order dated 20-10-1994. Similarly, petitioner of Special Civil Application No.6261 of 1996 was also appointed along with the aforesaid two petitioners by order dated 24-10-1994 on the post of Armed Constable on purely temporary basis for a period for a period of two years and the aforesaid period was to be treated as on probation. He was also appointed on the terms and conditions attached to the order dated 24-10-1994 similarly to that of the petitioners

of the aforesaid Special Civil Applications.

4. While during the aforesaid period of probation, it was found and the allegation against the aforesaid petitioners was that they have collected Rs.600/- each from the trainees to be paid to one Shri RH Majithiya, their higher officer for passing the said recruits/trainees and when they were collecting the said amount and after collecting the said amount, when they were going to pay the said amount to said Shri Majithiya, they were intercepted on 4-10-1995 by one Kishorsinh Bhikhubha Jadeja and the amount which was collected as bribe to be paid to Shri Majithiya was recovered from them and thereafter the said amount was deposited before the Principal of Police Training, Maha Vidyalaya, Junagadh and statement of various persons were taken, wherein names of the petitioners were referred as collecting bribe. That thereafter, internal inquiry was held and on conclusion of the said inquiry, as the petitioners were on probation, all the petitioners came to be discharged by the impugned orders. Being aggrieved by the impugned orders discharging them from services, the respective petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

5. Shri DJ Bhatt, learned advocate appearing on behalf of the petitioners of Special Civil Application No.1273 of 1996 and 1289 of 1996 while assailing the impugned orders has made the following submissions.

- That the order is punitive and therefore, without holding any inquiry, the petitioners could not have been discharged from services

- That the petitioners are not discharged on the ground that their services were not found satisfactory but on the ground of misconduct and therefore, before discharging them from services, a departmental inquiry was required to be initiated and in fact, some internal inquiry was initiated and when thereafter the services of the petitioners are terminated and/or they are discharged from services, it should be held that the said order is punitive and as the discharge order is without holding any departmental inquiry, the same requires to be quashed and set aside.
- That in connection with the said incident of corruption by the respondent No.4 i.e. Shri Majithiya, for collecting the amount from the trainees, a departmental inquiry was held by the competent authority against the respondent No.4 and the petitioners were called as witnesses in the said inquiry. That so far as respondent No.4 who was held to be guilty, penalty is imposed upon the respondent No.4 of deduction of Rs.500/- per month to be deducted from the pension for a period of five years only.
- That said Shri Majithiya was responsible for the incident dated 4-10-1995, still the petitioners have been terminated because of the said incident and no notice, no inquiry has been held against the petitioners and thereby action of termination is punitive in nature and not simple discharged.
- That when the inquiry was initiated against the respondent No.4, a similar inquiry ought to have been initiated against the petitioners also. Thus, action of the respondents is arbitrary and discriminatory in nature and the same is violative under Articles 14 and 16 of the Constitution of India.

6. Shri Bhatt has relied upon the following decisions in support of the above submissions

1. ***Narsingh Pal V. Union of India and others reported in AIR 2000 SC 1401***
2. ***Babu Lal V. The State of Haryana and others reported in AIR 1991 SC 1310***
3. ***Indra Pal Gupta V. The Managing Committee, Model Inter College, Thora reported in AIR 1984 SC 1110***
4. ***Parshottam Lal Dhingra V. Union of India reported in AIR 1958 SC 36***
5. ***V.P. Ahuja V. State of Punjab and others reported in (2000) 3 SCC 239***
6. ***Dipti Prakash Banerjee V. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others reported in (1999) 3 SCC 60***
7. ***A.P. State Federation of Coop Spinning Mills Ltd. and another V. P.V. Swaminathan reported in (2001) 10 SCC 83***
8. ***H.F. Sangati V. Registrar General of High Court of Karnataka and others reported in (2001) 3 SCC 117***
9. ***State of Punjab V. Raghbir Chand Sharma and others reported in (2002) 1 SCC 113***
10. ***Smt. Rajinder Kaur V. Punjab State and another reported in AIR 1986 SC 1790***

While relying upon the same, it is requested to allow the present Special Civil Application.

7. Opposing the present Special Civil Applications, Shri DA Desai, learned AGP has submitted that all the petitioners were probationers, they were not holding any post for which the departmental inquiry was required to be initiated. That considering the conduct on the part of the petitioners during the probation, when it was found that their services are not required and they cannot be continued in service and their services were not found satisfactory, they are discharged from service. Considering the impugned orders, it is submitted that the discharge orders are order simplicitor and not punitive and/or on the ground of any misconduct and the same were in consonance with the terms and conditions of the appointment orders. It is submitted that before forming the opinion to discharge the petitioners, an internal inquiry was initiated and held and thereafter, the petitioners came to be discharged. It is submitted that for forming an opinion whether the petitioners should be continued or not after probation, if some internal inquiry was held, it cannot be said that the impugned orders are punitive and/or for some misconduct. It is also further submitted that so far as the petitioners are concerned, their cases cannot be equated with that of Shri Majithiya for the purpose of departmental inquiry as the petitioners were probationers and respondent No.4 Shri Majithiya was a permanent employee against whom a departmental inquiry was required to be initiated and therefore, it is requested to dismiss the present Special Civil Applications by further submitting that when during the probation itself when the petitioners who were Armed/Unarmed Police Constables, indulged into such activities of collecting bribe, the petitioners cannot be continued in service, more particularly in police force and therefore, it is submitted that the

petitioners are rightly discharged from the service. Shri Desai has relied upon the following decisions in support of his submissions and in support of his request to dismiss the present Special Civil Application.

1. ***Municipal Committee, Sirsa V. Munshi Ram reported in (2005) 2 SCC 382***
2. ***Rajasthan State Road Transport Corpn and others V. Zakir Hussain reported in (2005) 7 SCC 447***
3. ***State of W.B. And others V. Tapas Roy reported in (2006) 6 SCC 453***
4. ***State of Punjab and others V. Sukhwinder Singh reported in (2005) 5 SCC 569***

8. Heard the learned advocates appearing on behalf of the parties.

9. It is not in dispute that all the petitioners were on probation for a period of two years and during the probation period, they are discharged from services. The discharge of all the petitioners is followed by the incident and on an allegation that while the petitioners and other persons were on training at training school, Junagadh, the petitioners were found collecting Rs.600/- each from other trainees to be paid to the respondent No.4, their higher officer for passing such recruits/trainees and when the petitioners after collecting the said amount were going to pay the said amount to Shri Majithiya, petitioners were intercepted on 4-10-1995 by other trainees and the amount which was collected as bribe to be paid to Shri Majithiya was recovered from them and the said amount was deposited before the Principal of Police Training, Maha Vidyalaya, Junagadh. Before forming an opinion to discharge the petitioners, the

statements of various persons were taken, wherein the names of the petitioners were referred as collecting bribes. An internal inquiry was also initiated before discharging the petitioners from services. That on going through the impugned orders, the discharge orders are orders simplicitor and does not mention any misconduct. Now in background of the above, the submissions on behalf of the respective parties are required to be considered.

10. It is the contention on behalf of the petitioners that the impugned orders are punitive and for the misconduct of collecting bribes for and on behalf of the respondent No.4 Shri Majithiya, their higher officer and therefore, a departmental inquiry ought to have been initiated against the petitioners before discharging them from services, more particularly when the departmental inquiry was initiated against Shri Majithiya and he was found guilty and the petitioners were shown as witnesses in the said inquiry. Therefore, it is the contention on behalf of the petitioners that when the departmental inquiry was initiated against Shri Majithiya before imposing the penalty and no inquiry was initiated against the petitioners, the same is discriminatory and violative under Article 14 of the Constitution of India. It is required to be noted at this stage that the learned advocate appearing on behalf of the petitioners has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of Parshottam Lal Dhingra (supra) and Smt. Rajinder Kaur (supra). It is required to be noted that so far as the decision of the Hon'ble Supreme Court in the case of Smt. Rajinder Kaur (supra) is concerned, the same is subsequently overruled by the Hon'ble Supreme Court in the case of Sukhwinder Singh (supra). It is also required to be noted that in the

decision of Smt. Rajinder Kaur (supra), at the relevant time, the Hon'ble Supreme Court relied upon the decision in the case of Parshottam Lal Dhingra (supra). Thus, when the aforesaid two decisions are overruled by the Hon'ble Supreme Court in the subsequent decisions, the same could not have been relied upon by the petitioners. The learned advocate is required to take sufficient care before citing the judgments and has to verify whether in subsequent decisions, the decisions which are relied upon by him are approved, followed or overruled. Without any proper verification, the learned advocate ought not to have cited the judgments and relied upon the said judgment which are overruled.

11. So far as the other judgments relied upon by the learned advocate appearing on behalf of the petitioners are concerned, as the impugned orders are orders simplicitors and not on any misconduct and considering the subsequent decision, which are referred to hereinabove, the same will not be of any assistance to the petitioners.

12. So far as the contention on behalf of the petitioners that as the departmental inquiry was initiated against Shri Majithiya, which was main culprit and is responsible and before imposing penalty upon him, the departmental inquiry was initiated, however, so far as the petitioners are concerned, no departmental inquiry has been initiated and/or notices have been issued and therefore, the action of the respondents in discharging the petitioners without holding any inquiry is discriminatory and violative of Article 14 of the Constitution of India, it is required to be noted that so far as said Shri Majithiya is concerned, he was a permanent employee and so far as the petitioners are concerned, they were probationers. Under the

circumstances, the petitioners' case cannot be compared with said Shri Majithiya. The petitioners being probationers had no substantive right to hold the post. Therefore, the said contention on behalf of the petitioners cannot be accepted.

13. As held by the Hon'ble Supreme Court in the case of Sukhwinder Singh (supra), the probationers is on test and has no right to the post. The Hon'ble Supreme Court in the said decision has held and observed as under:

> ***" The probationers is on test and has no right to the post. Probation period gives the employer time and opportunity to watch the probationers' performance and to dispense with his service for want of suitability for the post." "Where, a superior officer in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. The superior authorities of the departments have to take work from an employee and they are the best people judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job.***
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> ***"Mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature."***

14. In the case of Munshi Ram (supra), the Hon'ble Supreme Court has considered another decision of the Hon'ble Supreme Court in the case of Pavanendra Narayan Verma V. Sanjay Gandhi PGI for Medical Sciences and another reported in (2002) 1 SCC 520 and has observed that it cannot be held that the enquiry prior to the order of termination turned the otherwise innocuous order into one of punishment. An employer is

entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. It is also further held by the Hon'ble Supreme Court in the said decision that if order of termination indicates that it is a termination simpliciter and does not cast any stigma on the employee nor is it punitive, in such cases, even the principles of natural justice does not apply and there is no need for formal proceedings of inquiry before making such order. It is also further observed by the Hon'ble Supreme Court in the said decision that mere fact that there was an inquiry into conduct of employee concerned earlier, would not thereby render the termination invalid. A similar view has been taken by the Hon'ble Supreme Court in the case of Zakir Hussain (supra) and it is held by the Hon'ble Supreme Court that the probationer had no substantive right to hold the post.

15. Now considering the facts of the case on hand and considering the discharge order, the same are orders simplicitor. Before discharging the petitioners from services and when the petitioners are on probation and some allegations were made against the petitioners if an internal inquiry was conducted and the statements were recorded , the order of simplicitor would not become an order of stigmatic and/or punitive. For forming an opinion and to take a decision whether the petitioners should be continued in service, even if some inquiry is initiated and held and thereafter, opinion is formed and thereafter, the petitioners are discharged, it cannot be said that the impugned order is punitive and/or stigmatic and/or for some misconduct.

16. It is required to be noted that all the petitioners were serving in the police department as Armed/Unarmed Constables. All of them were on probation and even initial trainees. The allegations against the petitioners were collecting bribe for the higher officer for passing other trainees and recruits. They were caught with money and the said amount was subsequently deposited with the Principal also. Now, if during the probation itself, the petitioners indulged into such type of activity and considering the same, if the petitioners are discharged from service, it cannot be said that the action of the respondent in discharging the petitioners is in any way arbitrary and/or illegal. Considering the allegations levelled against the petitioners during the probation period, the petitioners cannot be continued in the police department and the petitioners are rightly discharged from the service. No illegality has been committed by the respondents in discharging the petitioners while they were on probation. On the contrary, the respondents are justified in discharging the petitioners from service and by not continuing the petitioners in police department/police force.

17. For the reasons stated above, all the petitions fail and dismissed accordingly. Rule discharged in each of the petition. Interim relief, if any stands vacated forthwith. No costs.

(M.R. SHAH, J.)

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